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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,302	09/22/2005	Michihiro Ohnishi	09947.0002-00000	1171

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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

EXAMINER

FORMAN, BETTY J

ART UNIT	PAPER NUMBER
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1634

MAIL DATE	DELIVERY MODE
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09/25/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/550,302

Applicant(s)

OHNISHI ET AL.

Examiner

BJ Forman

Art Unit

1634

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 September 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1,3,4 and 6-13.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/BJ Forman/
Primary Examiner, Art Unit 1634

Continuation of 11. does NOT place the application in condition for allowance because:

In section I: A of the response, Applicant traverses the combination of Zenhausern and Nikiforov because neither teaches first and second substrates each having a groove which together forms the claimed microchannel having first and second protruding parts. IT is maintained that the combination of Zenhausern and Nikiforov teaches all these elements. Zenhausern clearly teaches the microchannel having protruding parts at opposing sides (Fig. 1). While Zenhausern is silent regarding formation of the channel using opposing substrates, Nikiforov teaches this missing element and provided the motivation to do so (e.g. Col 8, lines 43-61).

In section B of the response Applicant argues that the movable array of constrictions as taught by Zenhausern are not encompassed by the movable protruding parts as recited in the claim because the reference teaches the movable array is a magnetoreheological (MR) fluid. Applicant acknowledges that the reference teaches movable constrictions but asserts that solidified MR fluid is not a part of the substrate that supports the channel and therefore does not meet the requirements of the claim. The argument has been considered but is not found persuasive. First, the claim does not require a "solid" protruding part and does not require that the protruding part supports the channel. Therefore the arguments are not commensurate in scope with the claim. The claim does not define or limit the construction of the protruding part. The claim merely requires protruding parts within the channel such that the protruding parts are movable. Furthermore, the specification does not define the construction or composition of the protruding parts so as to define them over the movable MR fluid of Zenhausern (see ¶ 31 of the pre-grant publication wherein the protruding parts are broadly defined). Zenhausern clearly teaches the microchannels having protruding parts which protrude from opposite sides of the channels (Fig. 1-2 and cited text)... Zenhausern further teaches the protrusions are provided as "a movable array of constrictions". For all these reasons it is maintained that the instantly claimed microchip is obvious in view of the combined teachings of Zenhausern and Nikiforov.

In section II, Applicant argues that Lough does not cure the deficiencies of Zenhausern and Nikiforov. The argument is not found persuasive because the references are not found deficient as discussed above.

In section III, Applicant argues that Smith and Lough do not cure the deficiencies of Zenhausern and Nikiforov. The argument is not found persuasive because the references are not found deficient.